

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RODERICK DEMMINGS,

Plaintiff,

v.

PACIFIC MARITIME
ASSOCIATION, ILWU LOCAL 19,
JOHN DOES 1-100,

Defendants.

CASE NO. C11-1864 RAJ

ORDER

This matter comes before the court on defendant Longshore Division of the International Longshore and Warehouse Union Local 19's ("Union") and defendant Pacific Maritime Association's ("PMA") motion to dismiss *pro se* plaintiff's claim under the Americans with Disabilities Act ("ADA") pursuant to Rule 12(c). Dkt. # 100, # 101. On September 26, 2012, the court granted the defendants' motion to dismiss under Rule 12(b)(6) to dismiss plaintiff's claims for breach of duty of fair representation, breach of contract, discrimination and retaliation on the basis of race and disability under Title VII and the Washington Law Against Discrimination ("WLAD") related to his deregistration and request for accommodation, and under section 1983. Dkt. # 40. On June 12, 2013,

1 the court DENIED PMA's motion to clarify or revise the court's order regarding
2 plaintiff's ADA claim. Dkt. # 97. The court noted that defendants had not moved the
3 court to dismiss the purported ADA claim specifically, and that strictly speaking, plaintiff
4 had not alleged an ADA claim by name. *Id.* at 1, 2. Nevertheless, the court noted that
5 construed liberally, plaintiff appeared to allege a claim for disability discrimination under
6 federal law, which is available pursuant to the ADA. *Id.* at 2. Since the court dismissed
7 plaintiff's WLAD and Title VII claims related to the deregistration and request for
8 accommodation based on the statute of limitations and procedural requirement, and PMA
9 had not adequately briefed whether the same procedural requirements and statute of
10 limitations applied under the ADA, the court denied PMA's motion without prejudice.
11 *Id.* at 2-3. The court allowed defendants to file renewed Rule 12(c) motions with respect
12 to plaintiff's ADA claim, which is now before the court.

13 Under Rule 12(c), after the pleadings are closed, but early enough not to delay
14 trial, a party may move for judgment on the pleadings. Fed. R. Civ. Proc. 12(c).
15 Judgment on the pleadings is properly granted when, accepting all factual allegations in
16 the complaint as true, there is no issue of material fact in dispute, and the moving party is
17 entitled to judgment as a matter of law. *Chavez v. U.S.*, 683 F.3d 1102, 1108 (9th Cir.
18 2012). Analysis under Rule 12(c) is "substantially identical" to analysis under Rule
19 12(b)(6) because, under both rules, a court must determine whether the facts alleged in
20 the complaint, taken as true, entitle plaintiff to a legal remedy. *Id.* Accordingly, the court
21 incorporates by reference the court's order granting defendants' Rule 12(b)(6) motion,
22 and will only address whether the same statute of limitations and procedural requirements
23 the court applied to the Title VII claim applies to the ADA claim here.¹

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25 ¹ The court's prior ruling as to which documents are subject to judicial notice applies
26 equally here. Dkt. # 40 at 1-2 n.1. *See Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th
27 Cir. 2012) (taking judicial notice of documents pursuant to Federal Rule of Evidence 201 on a
Rule 12(c) motion). Accordingly, plaintiff's motion to strike is DENIED as MOOT.

1 “The statutory scheme and language of the ADA and Title VII are identical in
 2 many respects.” *Walsh v. Nev. Dept. of Human Res.*, 471 F.3d 1033, 1038 (9th Cir.
 3 2006). Title I of the ADA invokes the same “powers, remedies and procedures” as those
 4 set forth in Title VII. *Id.* (citing 42 U.S.C. § 12117(a)). Accordingly, the time limits the
 5 court provided in its September 26, 2012 order (Dkt. # 40 at 7) for filing an EEOC charge
 6 and filing suit following the right to sue letter in Title VII cases apply equally to
 7 employment claims under the ADA.²

8 Mr. Demmings’s claim of disability discrimination under the ADA is based on the
 9 same allegations under his Title VII claim addressed by the court in its September 26,
 10 2012 order. Accordingly, the court’s analysis and conclusions in that order apply equally
 11 to plaintiff’s claim under the ADA, and the court incorporates by reference such analysis
 12 and conclusions. Dkt. # 40 at 7-9.

13 For all the foregoing reasons, the court GRANTS the defendants’ motions to
 14 dismiss under Rule 12(c) consistent with the court’s September 26, 2012 order. Dkt. #
 15 100, # 101. Accordingly, the court DISMISSES with prejudice Mr. Demmings’s claims
 16 for disability discrimination related to his deregistration and request for accommodation
 17 that occurred outside of the limitations period. The Clerk is DIRECTED to terminate
 18 plaintiff’s motion to strike (Dkt. # 104) as MOOT. *See* note 1 *supra*.

24 ² Those procedures require a plaintiff to file a charge of discrimination or retaliation
 25 within 180 days of the alleged unlawful employment practice, or within 300 days if the charge is
 26 initially filed with a state or local agency. 42 U.S.C. 2000e-5(e)(1). Once the Equal
 27 Employment Opportunity Commission (“EEOC”) issues a right to sue letter, a plaintiff has 90
 days to file a lawsuit. 42 U.S.C. § 2000e-5(f)(1). A claim is time-barred if it is not filed within
 these limits. *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 109 (2002).

1 Dated this 16th day of September, 2013.

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4 The Honorable Richard A. Jones
5 United States District Judge
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